



July 14, 1999

Mr. D. Craig Wood
Jeffers & Banack
745 East Mulberry, Suite 900
San Antonio, Texas 78212-3166

OR99-1956

Dear Mr. Wood:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 125852.

The North East Independent School District (the “district”), which you represent, received a request for documents relating to the dismissal of a specific employee. Although you state that certain responsive information has been released, you claim that the submitted documents from the employee’s personnel file are excepted from disclosure under section 552.102 of the Government Code.¹ We have considered the exception you claim and have reviewed the submitted information.

Initially, we note that the district seeks to withhold certain court documents. Documents filed with a court are generally considered public. *Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992). Therefore, the district must release these documents to the requestor.

We also note that some of the submitted records are confidential by law. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Section 611.002 of the Health and Safety Code, which pertains specifically to mental health patients, applies to “[c]ommunications between a patient and a professional, [and] records of the identity, diagnosis, evaluation, or treatment of a patient

¹We note that in your brief you raise section 552.002. However, based on your arguments, it appears that you intended to raise section 552.102. Therefore, we will address your arguments under that exception.

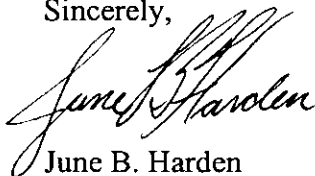
that are created or maintained by a professional.” *See also* Health and Safety Code § 611.001 (defining “patient” and “professional”). We have marked the information that may not be released except in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. Health & Safety Code § 611.002(b); *see id.* §§ 611.004, 611.0045.

Finally, we address your arguments that the submitted records are excepted from disclosure under section 552.102. Section 552.102(a) protects “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” The test to determine whether information is private and excepted from disclosure under common-law privacy, which is encompassed in sections 552.101 and 552.102 of the Government Code, is whether the information is (1) highly intimate or embarrassing to a reasonable person, and (2) of no legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977); *Hubert v. Harte-Hanks Tex. Newspapers Inc.*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref’d n.r.e.).

We have reviewed the submitted documents and agree that some of the information is protected by common-law privacy and must be withheld. The remaining information relates to the work behavior of an employee and the conditions for his continued employment. Since there is a legitimate public interest in the work behavior of a public employee and how he or she performs job functions, the district may not withhold these documents from public disclosure based on the common-law right to privacy. Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job performance of public employees), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow). We have marked the documents accordingly.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "June B. Harden", with a stylized, flowing script.

June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref: ID# 125852

Encl. Marked documents

cc: Mr. Rick Casey
San Antonio Express-News
P.O. Box 2171
San Antonio, Texas 78297-2171
(w/o enclosures)